IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No.

ALLAN GORDON AND ELI TEMPKIN, PETITIONERS,

vs.

UNITED STATES OF AMERICA, RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

	Print
Mandate of United States Supreme Court	1
Order on reconsideration	3
Judgment (Case No. 4531)	3
Judgment (Case No. 4532)	4
Clerk's certificate	4
Order allowing certiorari	5

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 4531

ALLAN GORDON Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

No. 4532

ELI TEMPKIN, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

Pleas and proceedings in the United States Court of Appeals for the Tenth Circuit, at the May Term, 1953, of said Court, before Honorable Sam G. Bratton, Honorable Walter A. Huxman and Honorable Alfred P. Murrah, Circuit Judges.

On the 10th day of July, A. D. 1953, the mandate of the Supreme Court of the United States, issued July 8, 1953, was filed in the office of the clerk of the United States Court of Appeals for the Tenth Circuit, in certain causes wherein Allan Gordon and Eli Tempkin were appellants, and United States of America was appellee, which said mandate is in the words and figures following:

[Mandate.]

United States of America, ss.

The President of the United States of America,

To the Honorable Judges of the United States Court of Appeals for the Tenth Circuit, Greeting:
(Seal)

Whereas, lately in the United States Court of Appeals for the Tenth Circuit, in a cause between Allan Gordon, Appellant, and United States of America, Appellee, No. 4531; and Eli Tempkin, Appellant, and United States of

America, Appellee, No. 4532, wherein the judgments of the said Court of Appeals affirming the judgment and sentence of the district court were duly entered on the 28th day of February, A.D. 1953; as by the inspection of the transcript of the record of the said United States Court of Appeals which was brought into the Supreme Court of the United States by virtue of a writ of certiorari, agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and fifty-two, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was duly submitted:

On consideration whereof, It is ordered and adjudged by this Court that the judgments of the said United States Court of Appeals in this cause be, and the same are hereby vacated.

And it is further ordered, That this cause be, and the same is hereby, remanded to the United States Court of Appeals for the Tenth Circuit for consideration in the light of the Government's confession of error.

June 1, 1953.

You, therefore, are hereby commanded that such proceedings be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said writ of certiorari notwithstanding.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, the eighth day of July, in the year of our Lord one thousand nine hundred and fifty-three.

HAROLD B. WILLEY,
Clerk of the Supreme Court of
the United States,
By Hugh W. Barr, Deputy Clerk.

(Endorsed) Supreme Court of the United States, No. 688, October Term, 1952. Allan Gordon and Eli Tempkin vs. United States of America.

Filed U. S. Court of Appeals, Tenth Circuit, July 10, 1953.

And thereafter the following proceedings were had in said cause in the United States Court of Appeals for the Tenth Circuit:

Order on Reconsideration.

Forty-fifth Day, May Term, Friday, August 7th, 1953. Before Honorable Sam G. Bratton, Honorable Walter A. Huxman and Honorable Alfred P. Murrah, Circuit Judges.

This cause comes on for consideration in pursuance of the mandate of the Supreme Court of the United States, vacating the judgments herein and remanding the same "for consideration in the light of the Government's confession of error."

In complete obedience to the mandate of the Court, we have earnestly reconsidered the questions in the light of the confession of error, and upon consideration whereof we respectfully adhere to the majority views heretofore expressed.

Judgment will be reentered accordingly.

Judge Huxman dissenting.

It would seem that the question is of sufficient gravity that the case should be set for argument and the Justice Department be given an opportunity to argue the question orally or present its views in a written brief. Only in this way can the intent of the Supreme Court as it manifests itself to me in its mandate be made effective. In any event I adhere to the views expressed in my dissent in Gordon et al v. United States, 203 F.2d 248, and would reverse the judgment and remand the case with directions to grant a new trial.

Judgment (Case No. 4531).

(August 7, 1953.)

Pursuant to the order on reconsideration, it is now here ordered and adjudged by this court that the judgment of the United States District Court for the District of Utah be and the same is hereby affirmed.

It is further ordered by this court that Allan Gordon, appellant, surrender himself to the custody of the United States Marshal for the District of Utah, in execution of

the judgment and sentence imposed upon him, within ten days from and after the date of the filing of the mandate of this court in said district court.

Judgment (Case No. 4532).

(August 7, 1953.)

Pursuant to the order on reconsideration, it is now here ordered and adjudged by this court that the judgment of the United States District Court for the District of Utah be and the same is hereby affirmed.

It is further ordered by this court that Eli Tempkin, appellant, surrender himself to the custody of the United States Marshal for the District of Utah, in execution of the judgment and sentence imposed upon him, within ten days from and after the date of the filing of the mandate of this court in said district court.

Clerk's Certificate.

United States Court of Appeals, Tenth Circuit.

I, Robert B. Cartwright, Clerk of the United States Court of Appeals for the Tenth Circuit, do hereby certify the foregoing as full, true, and complete copies of certain record entries and proceedings (except full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States), had and filed in the United States Court of Appeals for the Tenth Circuit in certain causes in said United States Court of Appeals, No. 4531, wherein Allan Gordon was appellant and United States of America was appellee, and No. 4532, wherein Eli Tempkin was appellant, and the United States of America was appellee, as full, true, and complete as the originals of the same remain on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Court of Appeals for the Tenth Circuit, at my office in Denver, Colorado, this 18th day of August, A.D. 1953.

(Seal, U. S. Court of Appeals, Tenth Circuit)

ROBERT B. CARTWRIGHT,
Clerk of the United States Court of Appeals, Tenth Circuit.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

No. 318

ALLAN GORDON and ELI TEMPKIN, Petitioners,

vs.

UNITED STATES OF AMERICA

ORDER ALLOWING CERTIORARI—Filed November 9, 1953

The petition herein for a writ of certiorari to the United States Court of Appeals for the Tenth Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.